

## India needs a clearly defined list of federal offences

- Sujith Kumar N

*Law is order, and good law is good order - Aristotle*

The recent standoff between the West Bengal government and the Central Bureau of Investigation (CBI) brings to fore the lacunae in our federal structure deepening the fault-line in Centre-State relations. In the political sphere, tall opposition leaders like Congress' Priyanka Gandhi, P. Chidambaram, former Haryana Chief Minister Bhupinder Singh Hooda, Samajwadi Party President Akhilesh Yadav, BSP Chief Mayawati among others are on radars of CBI or Enforcement Directorate (ED) for irregularities in various government dealings. Seeing the trend, the opposition has been blaming the BJP government for using institutions like CBI, ED and Income Tax

department for vendetta politics. In fact, Andhra Pradesh and West Bengal governments recently withdrew the general consent given to CBI for carrying out operations in their respective states, taking the Centre-State relations to a new theatre of conflict. Without getting into the politics of it, this article tries to look at the genesis of the problem which has grown into unmanageable proportions, from a legal and constitutional standpoint.

### **CBI**

The elephant in the room is the CBI, which draws its powers from the New Delhi Special Police Establishment Act 1946. Originally limited to offences

related to corruption involving Union government officials, it was gradually extended to employees of all Central Public Sector Undertakings including banks.



Over the years, CBI went on to become a highly credible and premier agency trusted by States and higher courts to investigate conventional crimes like kidnapping, murder, organised crime and economic offences. While its motto is “Industry, Impartiality and Integrity” the agency seems to be losing its

credibility in the public eye with Hon’ble SC terming it as “a caged parrot” in the hands of ruling establishment as successive governments have used CBI as a political instrument. Alarm bells on the need for reform of CBI were already sounded well before the recent internal feud (leading to replacement of CBI Director). But what the current standoff between the Union and the West Bengal state entails for rule of law in the larger scheme of things is a matter of concern.

While Central and State law enforcement agencies are bound by the same IPC for crimes and corruption cases, it must be remembered that law and order is a State subject according to the Indian constitution, and therein lies the crux of the issue. As general consent is being withdrawn, CBI would require the consent of these States (AP, WB) for every corruption investigation of Union government employees otherwise the State Anti-Corruption Bureau (ACB)

would be required to handle such cases. This would not only lead to conflicts between law enforcement agencies but also inordinate delays in resolution of cases. The high drama and clash between the law enforcement agencies - the CBI and the State police, on the night before Mamata Banerjee staged a dharna in Kolkata, is a glaring example of rule of law being undermined at an institutional level. It is unfortunate that rule of law - which constitutes a part of the basic structure doctrine of the Indian Constitution, is undermined due to partisan politics.

### **Other Federal Democracies**

To understand the possible ways to resolve such a deadlock, let's look at how law enforcement agencies in robust federal democratic nations like US, Canada, Australia and Germany function (Comparison table is shown below).

In the US, the responsibility for criminal law and criminal justice

is shared between the States and the Federal government. All the 50 States have their own penal codes. The States generally have the power to pass criminal laws in the US, yet jurisdiction with respect to offences are clearly demarcated for State and Federal agencies. Federal offences are mostly those with inter-state ramifications including drug trafficking, gun crimes, organised crimes which are dealt with by agencies like Bureau of Alcohol, Tobacco, Firearms, and Explosives, Drug Enforcement Administration, Federal Bureau of Investigation, U.S. Immigration and Customs Enforcement, Internal Revenue Service, and Secret Service etc.

Germany and Australia also have a system similar to the USA, where an investigation is largely a state affair but there is a clearly defined jurisdiction for Federal government agencies.

In Canada, criminal law is an area of exclusive federal jurisdiction and prosecution of

most criminal offences is conducted by the provincial Attorney General. Eight out of ten provinces contract policing responsibilities to Royal Canadian Mounted Police (RCMP) - Canada's national police force.

### **Setting the house in order**

Essentially all of the nations mentioned above have clearly defined and demarcated offences, the jurisdiction of which automatically rests with respective agencies, thus, creating harmonious governance structures. India needs a similar system where a class of offences is clearly defined as Federal Offences - those that have implications for national security, unity and integrity of India, crimes related to terrorism, serious financial frauds, currency fraud, organised crime and such other crimes which have inter-state ramifications. Crime investigation jurisdiction should be largely left to the states.

Federal agencies like CBI would have automatic jurisdiction of investigating federal offences thereby creating systems which operate on their own, avoiding the lock of horns between various agencies or federating units. All the agencies - federal agencies and agencies of the different states should work in co-operation and coordination within a broad framework which protects rule of law and upholds the spirit of true cooperative federalism.

This brings us to the need to re-imagine federalism in India by replacing uniform and centralising tendencies of the past with decentralised systems where states are given more flexibilities and powers to strengthen their governance structures, while preserving national unity and diversity, to be able to focus on real issues such as elimination of poverty and raising the standards of living of all. •

## Overview of criminal law jurisdictions in other federations

USA	Germany	Australia	Canada
<b>Source of Criminal Law</b>			
50 states have their own penal codes	German Penal Code	Common law and Code jurisdictions for different states	Criminal Code, Canada evidence act and other statutes
<b>Primary Law Enforcement</b>			
States	States	States	Centre
<b>Role of Federal agencies</b>			
White-collar crime, International money laundering, Drug trafficking, Gun crimes, Credit card and ATM fraud, Organized crime, Public corruption crimes etc	Investigating international organized crime, terrorism and other cases related to national security etc	AFP investigates serious and complex matters including fraud, drug trafficking, organised crime, money laundering, Cyber crime	Commercial crime, counterfeiting, drug trafficking, border integrity, organized crime, and other related matters; providing counter-terrorism and domestic security
<b>Federal Setup</b>			
Multi-agency cooperation is functional	Federal police co-ordinates with the state police forces	State departments have powers for specific federal offences within their purview	RCMP is contracted by 8 states for frontline policing services